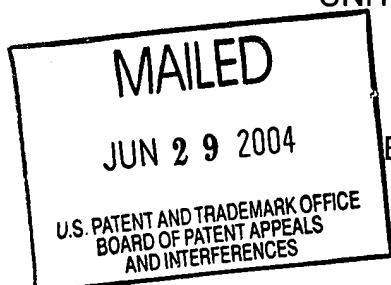


The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DOREEN Y. CHENG

Appeal No. 2003-0149
Application No. 09/176,171

ON BRIEF

Before BARRETT, DIXON, and LEVY, **Administrative Patent Judges.**
DIXON, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 17-33,
which are all of the claims pending in this application.

We AFFIRM-IN-PART.

Appellant's invention relates to a distributed software controlled theft detection system. An understanding of the invention can be derived from a reading of exemplary claim 17, which is reproduced below.

17. A home or office security system comprising:

a network via which a plurality of appliances communicate to effect a control of one or more appliances of the plurality of appliances,

a first appliance of the plurality of appliances having:

a first appliance component that is configured to effect a primary function of the first appliance that is independent [sic, of] security, and

a status reporter that is configured to communicate a status of the first appliance via the network;

an alarm activation processor, operably coupled to the status reporter, that is configured to receive the status, and to effect an alarm response dependent on the status.

The prior art of record relied upon by the examiner in rejecting the appealed claims is as follows:

Bassett et al. (Bassett)	5,706,191	Jan. 6, 1998
Le Van Suu	5,714,933	Feb. 3, 1998
Rietkerk	5,748,083	May 5, 1998
Hall et al. (Hall)	5,898,831	Apr. 27, 1999
		(filed Dec. 16, 1996)

Claims 17-20, 25-31, and 33 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bassett in view of Rietkerk. Claims 21-23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bassett in view of Rietkerk further in view

of Hall.¹ Claims 24 and 32 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bassett in view of Rietkerk further in view of Le Van Suu.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejections, we make reference to the examiner's Final rejection (Paper No. 20, mailed Oct. 10, 2001) and the examiner's answer (Paper No. 25, mailed Jun. 24, 2004) for the examiner's reasoning in support of the rejections, and to appellant's brief (Paper No. 24, filed Mar. 21, 2002) for appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we make the determinations which follow.

At the outset, we note that appellant has indicated that the claims do not stand or fall together and has included headings throughout the brief as a manner of addressing

¹ Here, we note that the examiner did not restate the rejections in the answer, but incorporated them from the Final Rejection yet at page 4 of the answer, the examiner states that he agrees with appellant's arguments "and therefore, would [sic] considered these claims (21-23)[sic, allowable]." While not specifically withdrawing the rejection, we find that the examiner has done so by agreeing with appellant's arguments. Therefore, we will not address the rejection of these claims in our decision.

the claims. We will therefore address the claims in a similar manner and address appellant's specific arguments thereto. (See brief at page 3 et seq.)

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. **See In re Rijckaert**, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A *prima facie* case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. **See In re Lintner**, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is *prima facie* obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. **See In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. **See In re Warner**, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), **cert. denied**, 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against

employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. **See, e.g., Grain Processing Corp. v. American Maize-Prods. Co.**, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

When determining obviousness, "the examiner can satisfy the burden of showing obviousness of the combination 'only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.'" **In re Lee**, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing **In re Fritch**, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). "Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" **In re Dembiczak**, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). "Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact." **Dembiczak**, 175 F.3d at 999-1000, 50 USPQ2d at 1617, citing **McElmurry v. Arkansas Power & Light Co.**, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

Further, as pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the claim." **In re Hiniker Co.**, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Therefore, we look to the limitations set forth in independent claim 17.

The examiner maintains that the combination of Bassett and Rietkerk teach and fairly suggest the invention as recited in independent claim 17. (See final rejection at pages 2-3.) We agree with the examiner. The examiner maintains that the first appliance (25; HVAC) would have a primary function independent of security and that the AIM (70) attached thereto would provide status information via the network (20). In response to the status of the HVAC system, the controller (15 or 112 or 114) would provide control or further communication to a utility company which would activate some alarm or notice in case of a failure or hazardous condition. (Bassett at column 8, lines 50-67; column 12, line 41 - column 14, line 63.) The examiner maintains that Bassett does not teach a security system, and relies upon the teachings of Rietkerk to suggest a security system. While we find that certain features of the system of Bassett concern failures and hazardous conditions which are a matter of security, we agree with the examiner that Rietkerk clearly teaches and suggests the use of a security system. Therefore, we find that the examiner has established a *prima facie* case of obviousness.

Appellant argues that the examiner's reliance upon Bassett for teaching alarms and security systems such as a fire might be detected by unit 40 and status information from appliance unit 40 whose primary function is security would not meet the limitation recited in the language of claim 17 which requires that the primary function is not security. We do not find appellant's argument persuasive since the examiner

formulated the rejection based upon appliance 25 and AIM 70 and not appliance 40.

Therefore, this argument is not persuasive.

Appellant argues that the examiner has failed to indicate what in Bassett is the alarm processor and that the alarm is in fact activated by units 40/73 and that controller 15 merely serves a communication function. Appellant has not indicated where Bassett teaches that the controller merely serves as a communication function. Therefore, this argument is not persuasive. Furthermore, we find that appellant's arguments are contrary to the teachings we cite to above. Here, it would appear that appellant appears to be reading the language of independent claim 17 narrower than recited in the claims or appellant has not indicated any special definition in the specification of any of the claimed terms.

The terms used in the claims bear a "heavy presumption" that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art. **Texas Digital Sys., Inc. v. Telegenix Inc.**, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002). Dictionaries, encyclopedias, and treatises are particularly useful resources in determining the ordinary and customary meanings of claim terms. *Id.* at 1202, 64 USPQ2d at 1818. Indeed, these materials may be the most meaningful sources of information in better understanding both the technology and the terminology used by those skilled in the art to describe the technology. *Id.* at 1203, 64 USPQ2d at 1818.

There is no evidence in the record that the word "security," had any special meaning to the artisan at the time of disclosure. Nor do we find any particular definition of the word in the instant specification. **See In re Paulsen**, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) (repeating the principle that where an inventor chooses to be his own lexicographer and gives terms uncommon meanings, he must set out the uncommon definition in the patent disclosure). **See also Beachcombers Int'l. Inc. v. WildeWood Creative Prods. Inc.**, 31 F.3d 1154, 1158, 31 USPQ2d 1653, 1656 (Fed. Cir. 1994) ("As we have repeatedly said, a patentee can be his own lexicographer provided the patentee's definition, to the extent it differs from the conventional definition, is clearly set forth in the specification."); **Johnson Worldwide Assocs. Inc. v. Zebco Corp.**, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999) (there is a "heavy presumption" that claim language has its ordinary meaning). We thus interpret the word "security" in accordance with its ordinary meaning: "freedom from risk or danger; safety." **The American Heritage® Dictionary of the English Language** (3d ed., Houghton Mifflin Company 1992). Electronic version licensed from INSO Corporation.

Appellant argues that Rietkerk and Bassett are deficient in showing an alarm is effected in response to a status report that comes from an appliance whose primary function is NOT security. (See brief at page 5.) We disagree with appellant, and we will sustain the rejection of independent claim 17.

With respect to independent claim 26, appellant argues that the examiner has not acknowledged the differences in claim 26 from those in independent claim 17 and the examiner has not met his burden under 37 CFR § 1.104. Here, we merely address whether the merits of the examiner's rejection are sufficient under the statutes applied. Here, we agree with the examiner and find that the examiner's applied combination would have taught or fairly suggested the invention recited in independent claim 26. Appellant again argues that the examiner has failed to indicate any appliance whose primary function is NOT security. (See brief at page 6.) Therefore, this argument is not persuasive as we have discussed above, and we will sustain the rejection of independent claim 26. Here, we note that the language of claim 26 only requires that the "security system has an alarm activation processor . . ." rather than the activation processor in the appliance. Above, we found that the security system has an alarm activation processor.

With respect to independent claim 29, appellant argues that the examiner has not acknowledged the differences in claim 29 from those in independent claim 17, and the examiner has not met his burden under 37 CFR § 1.104. Here, we merely address whether the merits of the examiner's rejection are sufficient under the statutes applied. Here, we agree with the examiner and find that the examiner's applied combination would have taught or fairly suggested the invention recited in independent claim 29. Appellant again argues that the examiner has failed to indicate any appliance whose

primary function is NOT security and which also has an alarm activation processor and which receives a status report from another appliance. (See brief at page 7.) While we note that independent claim 29 does recite "an other" [sic, another] appliance, the claim does not expressly recite a plurality of appliances or that they have various functions. As we discuss above, terms are given their broadest reasonable interpretation using their ordinary and customary meaning. Therefore, we find that an "appliance" would be "a device or instrument designed to perform a specific function, especially an electrical device, such as a toaster, for household use." **The American Heritage® Dictionary of the English Language** (3d ed., Houghton Mifflin Company 1992). Electronic version licensed from INSO Corporation. Here, both the appliances (70-78) and controller (15) would reasonably be considered appliances absent a specific definition to the contrary. Therefore, this argument is not persuasive, and we would sustain the rejection of independent claim 29 as discussed above with respect to claim 17.

With respect to dependent claim 18, appellant argues that Rietkerk does not teach or suggest the use of a second appliance with the alarm activation processor integrated within the second appliance. In the answer, the examiner agrees with appellant's argument and changes the rejection stated in the final rejection at page 3 to rely upon the teachings of Bassett. (See answer at pages 3-4.) The examiner maintains that the AIM would detect failures and act as the alarm activation processor

and cites to column 8 of Bassett for support of this contention. We disagree with the examiner and find that Bassett merely teaches that the AIM may learn the proper operation and communicate variations to the controller 15. We find that the controller or other related circuits would perform the function of the alarm activation processor to notify the user/owner. Therefore, the examiner has not established that the "alarm activation processor is integrated in the second appliance" as required by the language of dependent claim 18, and we will not sustain the rejection of dependent claim 18 and claims 19-20 which depend therefrom.²

With respect to dependent claims 19, 20, 27, 28, 30 and 31, the examiner maintains that the compliant modules for communication are not taught by Bassett, but that it would have been obvious to one of ordinary skill in the art at the time of the invention to have these units programmed and interfaced to work with each other. (See final rejection at page 3 and repeated in the answer at page 4.) We find that the examiner has provided no teaching or suggestion for the specific limitations recited in these claims and has not established a *prima facie* case of obviousness. Therefore, we will not sustain the rejection of dependent claims 19, 20, 27, 28, 30 and 31.

With respect to dependent claims 25 and 33, the examiner maintains that Rietkerk teaches receiving a status and actuating an alarm dependent upon a rule

² With respect to claims 21-23, the examiner agrees with appellant's arguments at page 4 of the answer, and we will not address these claims in our decision.

base associated with the appliance. We have reviewed the portions of Rietkerk cited by the examiner and find no teaching of the use of a rule based system for a security system. Therefore, the examiner has not established a *prima facie* case of obviousness for claims 25 and 33.

With respect to dependent claims 24 and 32, appellant argues that the necessity of combining three references gives rise to an inference of non-obviousness. (See brief at page 9.) Appellant provides no legal support for such an inference and no reasoned analysis for such a conclusion. Therefore, this argument is not persuasive. Appellant argues that these claims recite a further dependence of the alarm on the area status and the status report. The examiner does not address the combination of both the area status and the status report in the final rejection at page 6 or in the answer at pages 4-5. Therefore, the examiner has not established a *prima facie* case of obviousness for claims 24 and 32.

CONCLUSION

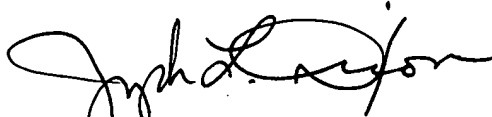
To summarize, the decision of the examiner to reject claims 17, 26, and 29 under 35 U.S.C. § 103 is affirmed, and the decision of the examiner to reject claims 18-25, 27, 28, and 30-33 under 35 U.S.C. § 103 is reversed.

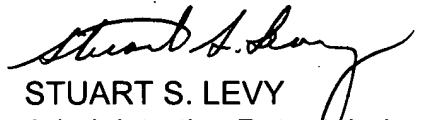
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No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART


LEE E. BARRETT
Administrative Patent Judge


JOSEPH L. DIXON
Administrative Patent Judge


STUART S. LEVY
Administrative Patent Judge

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Appeal No. 2003-0149
Application No. 09/176,171

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